IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 31333 of 2006(E)

PETITIONER:

SREEDHARAN S/O.KITTU,
KAKKATTIL HOUSE, WARD NO.6, KOOVAPPADY PANCHAYAT,
KUNNATHUNADU.

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS:

THE KOOVAPPADY GRAMA PANCHAYAT
REPRESENTED BY THE SECRETARY,
OFFICE OF THE KOOVAPPADY GRAMA PANCHAYAT,
KOOVAPPADY P.O., PIN- 683 544.

BY ADV. SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ
SRI.M.RISHIKESH SHENOY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31333 OF 2006

Dated this the 16th day of March, 2007

JUDGMENT

The petitioner who is an agriculturist owns land having an extent of 30.80 Ares within the area of the 1st respondent Panchayat complains that a water channel which was going through the western boundary of his property has been filled up by a neighbour by name, Pavithran(not made a party in this Writ Petition) and that the Panchayat is now taking action to have a road constructed upon what was originally the water channel. Referring to Section 166(1) proviso and entry 5 in category A of third schedule of the Panchayt Ray Act, the petitioner contends that it is the mandatory duty of the Panchayat to maintain water channels and the petitioner's prayers in this Writ Petition are that appropriate directions may be issued to restore the water channel which was going through the western boundary of the petitioner's property presently filled up as specified in Ext.P2 report submitted by the Village Officer. The further prayer in the writ petition is that a direction be issued to the Panchayat to stop all works of road construction at the western boundary of the petitioner's property before the water channel is restored.

3. A detailed counter affidavit has been filed by the Panchayat producing various documents which will indicate that the road work has

been taken up by the Panchayat on the basis of successive representations submitted by the neighbouring public and considering the necessity of such a road in view of Kapricode Eco Tourism project in the heighbourhood. It is even suggested that the actual filling up of the Thodu was done by the petitioner himself so that he can annex that area to his own property. Denying all the contentions the petitioner has filed a reply affidavit. Along with the reply affidavit also various documents have been produced by the petitioner.

4. I have heard Sri.Liji Vadakkedom, counsel for the petitioner and Smt.Jayasree Manoj, counsel for the 1st respondent Panchayat.

5. Having regard to the submissions addressed before me, I feel that several disputed questions like the following will arise for determination:

1. Whether the road which is proposed to re-constructed by the Panchayat was a Panchayat road already maintained by the Panchayat and referred to in the road register maintained by the Panchayat?
2. What exactly was the position of the water channel?
3. Who has actually filled up the water channel?

6. I do not think that this Court will be justified in invoking the jurisdiction of this Court under Article 226 for resolving these controversies. But the submission of the learned counsel for the

Panchayat that the construction of the road is absolutely necessary in the interests of the Panchayat and also in the interests of the Kapricode Eco Tourism project certainly has some appeal. Similarly the submission of the learned counsel for the petitioner that the Panchayat is obliged under the Panchayat Raj Act to preserve and maintain the water channels and that unless there is a water channel or a proper drainage, there is likelihood of flooding in the petitioner's property during the monsoon season also appears to be correct. Learned counsel for the petitioner submitted that the enquiry which is now started by the Panchayat will reveal as to who has actually filled up the water channel. If it is revealed that the petitioner filled up the channel, he will be ready and willing to pay unlimited amounts by way of compensation to the Panchayat. I record the above submission of the petitioner.

7. The total length of the road which is to be re-constructed by the Panchayat as per the present project is only 50 meters. The project is for construction of retaining walls on both sides of the road having a length of 50 meters.

8. The funds necessary for constructing the retaining wall and that portion of the proposed wall abutting the boundary of the petitioner's property will be set apart and that portion of the funds so set apart will not lapse, it is so ordered.

9. I relegate the parties to a competent Civil Court and I am disposing of the Writ Petition accordingly. However, there will be a direction that regarding the construction of the retaining wall in so far as it relates to the boundary of the petitioner's property, the status quo obtaining as on today will be maintained by the Panchayat for a period of one month. The other works can be continued by the Panchayat after retaining a width of 80 CMs along the western boundary of the petitioner's property in Survey No.248/1 of Kodanad Village. It is open to the petitioner to make necessary application as and when he wants the continuance of the present order directing maintenance of the status quo before the Civil Court.

The Civil Court will take into account all relevant and binding precedents including the judgment in **Mammadhan Kutty V. Pallivasal Grama Panchayat** (2004 (1) KLT 751), if the same applies to the facts situation in this case, while considering the application to be submitted by the petitioner.

PIUS C. KURIAKOSE, JUDGE

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